

Exhibit 2

FORM DC-15  
**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF CORRECTIONS**  
**A 552586**

☒ MISCONDUCT REPORT ☐ OTHER ☐ DC-ADM 801 INFORMAL RESOLUTION

DC Number **GV6719** Name **VERBANIK** Facility **SCI MERCER** Incident Time 24 Hr. Base **0800** Incident Date **9-11-2008** Date of Report **9-11-2008**

Quarters **C UNIT** Place of Incident **C UNIT**

**A-11-1** OTHER INMATES OR STAFF INVOLVED OR WITNESSES (CHECK I OR W)

| DC Number | Name                   | I | W | DC Number | Name | I | W |
|-----------|------------------------|---|---|-----------|------|---|---|
|           | CAPTAIN DECHANT        | ✓ |   |           |      |   |   |
|           | MS. KING, UNIT MANAGER | ✓ |   |           |      |   |   |

MISCONDUCT CHARGE OR OTHER ACTION **33. USING ABUSIVE, OBSCENE, OR INAPPROPRIATE LANGUAGE TO AN EMPLOYEE. 35 REFUSING TO OBEY AN ORDER. 39 REFUSING TO WORK**

STAFF MEMBER'S VERSION ON THE ABOVE DATE AND TIME, INMATE VERBANIK (GV6719) CAME INTO STAFF OFFICE IN A DEMANDING AND ARGUMENTATIVE MANNER. INMATE STATED "YOU NEED TO TURN THE LIGHTS OFF IN DAYROOM CELL #17." THIS WRITER EXPLAINED PER UNIT MANAGER KING AND HOUSING UNIT RULES THE LIGHT IS TO BE ON. THIS WRITER GAVE DIRECT ORDER TO LEAVE OFFICE. INMATE AGAIN ENTERED OFFICE AND ARGUED FOR LIGHTS TO BE OFF. HE WAS TOLD TO LEAVE OFFICE AGAIN. UPON EXITING STAFF OFFICE HE TURNED TOWARD THIS WRITER AND STATED "I'M GOING TO FUCKING TALK TO SOMEBODY ABOUT YOU." INMATE ALSO MADE CLAIM THAT ALL INMATES IN CELL #17 WANT LIGHT OFF. UPON QUESTIONING OTHER INMATES THIS WRITER FOUND THIS TO BE A LIE. AT THE FIRST MOVEMENT OF DAY (0800) INMATE VERBANIK SIGNED OUT TO WORK BLOCK 26. HE TOLD HIS SUPERVISOR (MR. BERKLEY) THAT HE WAS SICK. INMATE SENT BACK TO C BLOCK. INMATE VERBANIK WAS LATER OBSERVED IN UNIT DOWNSTAIRS DAYROOM BY THIS WRITER AND SHIFT COMMANDER CAPTAIN DECHANT, WITH A TABLE FULL OF LEGAL WORK AND WORKING DILIGENTLY ON IT. INMATE EMPLOYED AS TUTOR.

IMMEDIATE ACTION TAKEN AND REASON

☒ PRE-HEARING CONFINEMENT

IF YES: YES ☐ NO ☐ TIME ☐ DATE ☐

Refer to the hearing examiner due to repeated warnings. Inmate moved to A Block, not suitable to be housed in a round unit.

FORMS GIVEN TO INMATE ☒ REQUEST FOR WITNESSES AND REPRESENTATION ☒ INMATE'S VERSION

REPORTING STAFF MEMBER SIGNATURE AND TITLE **[Signature] CO1**

ACTION REVIEWED AND APPROVED BY RANKING C.O. ON DUTY **[Signature] Cpt** SIGNATURE AND TITLE **[Signature] J**

DATE AND TIME INMATE GIVEN COPY **9/11/08 1335hs**

YOUR HEARING MAY BE SCHEDULED ANY TIME AFTER: DATE **9/12/08** TIME **1335hs**

MISCONDUCT CATEGORY ☒ CLASS 1 ☐ CLASS 2

Signature of Person Serving Notice **[Signature] CO1**

NOTICE TO INMATE

You are scheduled for a hearing on the allegation on the date and time indicated or as soon thereafter as possible. You may remain silent if you wish. Anything you say will be used against you both at the misconduct hearing and in a court of law. If this matter is referred for criminal prosecution. If you choose to remain silent, the hearing committee/examiner may use your silence as evidence against you. If you indicate that you wish to remain silent, you will be asked no further questions. If you are found guilty of a Class 1 misconduct, any pre-release status you have will be removed.

WHITE — DC-15 YELLOW — Inmate PINK — Reporting Staff Member GOLDENROD — Deputy Superintendent Facility Management

DC-141

PART II A

COMMONWEALTH OF PENNSYLVANIA

Rev. 6-84

INMATE REQUEST FOR  
REPRESENTATION AND WITNESSES

DEPARTMENT OF CORRECTIONS

| DC Number | Name     | Institution | Date    | Number as on Part I |
|-----------|----------|-------------|---------|---------------------|
| GV6719    | VERBANIK | SCI MERCER  | 9-11-08 | A 552586            |

You have been charged with a misconduct. You may request assistance and/or witnesses to appear at your hearing by completing the section(s) below.

In order to have assistance or witnesses at your hearing, you must complete this form and present all copies to one of your housing officers no later than 9:00 a.m. the first working day after you receive notice of the misconduct.

Assistance: ☐ I do not request assistance

AC-ADM-007

☒ I request assistance by Mr. Winfred Milner, AP-6690 (Inmate Legal Reference Aide) *Is Need E Assist because Eye Sight, Denied by Hx.*  
(The person requested must be willing to assist you)

Witnesses: You may request witnesses in accord with DC-ADM 801. State the relevance and importance of the testimony the witness will give.

*Inmate is capable of present his own defense*

If Inmate  
1. Name of Witness: No. ~~Quarters~~  
Mr. Berkley, Teacher/Supervisor  
Why is this person's testimony relevant and important?  
Staff who Approved My Work Laxin.

DO NOT WRITE IN THIS SECTION  
For Use by Hearing Examiner

Witness permitted? No If not, why not?

*Denied by Hx. Not needed to determine guilt or innocence*

Inmate legal Per DC-ADM 007 Reference Aide  
2. Name of Witness: No. AP Quarters 2-2  
Winfred Milner 6690  
Why is this person's testimony relevant and important?  
I need Mr. Milner, because I am legally blind in my right eye, awaiting corrective surgery here at Mercer and unable to collect relevant law information for the above reason.

Witness permitted? Yes If not, why not?

*Same as 1*

FL  
3. Name of Witness: No. 2 Quarters 17-1  
Thomas Molina, ~~Per~~  
Why is this person's testimony relevant and important?  
This man was standing by 96's office at about 8 AM. This is the time of the alleged abusive language use.

Witness permitted? Yes If not, why not?

*Same as 1*

Robert R. Verbanik  
Inmate's Signature

This section to be completed by Housing Officer only

Received completed form 1530 hours 9-12-08  
Time Date

Dgt Story  
Housing Officer's Signature

J. P. Kussack  
Hearing Examiner's Signature

|   |                                 |   |                                   |
|---|---------------------------------|---|-----------------------------------|
| DC-141, Part 2 E<br>Misconduct Hearing Appeal |                                 | COMMONWEALTH OF PENNSYLVANIA<br>DEPARTMENT OF CORRECTIONS |                                   |
| DC Number<br><b>GV6719</b>                    | Name<br><b>Verbanik, Robert</b> | Institution<br><b>SCI-Mer</b>                             | No. From Part I<br><b>A552586</b> |

I was found guilty of misconduct number A552586 - on 9-24-08 (date)

by the Hearing Examiner, and I wish to appeal that decision on the following grounds:

Check Area(s) Involved

- ☒ a. the procedures employed were contrary to law, Department directives, or regulations;  
☒ b. the punishment is disproportionate to the offense; and/or  
☒ c. the findings of fact were insufficient to support the decision.

Below is a brief statement of the facts relevant to my claims(s). It includes the identity of all persons who may have information that may be helpful in resolving this matter.

The present mis-conduct conflicts with DC.ADM. 804  
IX(1) + VI(2) acts of vengeance or retaliation by staff  
complained on or grieved and must be dismissed  
because of my evidence presented <sup>and</sup> above grounds for appeal.

The hearing examiner claims she found me guilty by  
the preponderance of the evidence. I disagree and  
show "beyond a reasonable doubt" my innocence  
and that the misconduct was retaliation due to  
complaints by me against Yo Schallen - see evidence <sup>grievance</sup> <sup>complaint</sup>  
my version vs. Schallen's and my time line 2<sup>nd</sup> pg. of <sup>Inmate</sup> version  
and the hearing examiner's explanation of her guilty finding.  
When taken under consideration the foregoing calls for reversal  
and dismissal - (c) above grounds for appeal.

Witnesses and representation were denied clearly against  
DC.ADM. 801 & 007, Mr. Winfred Milner, AP6690, was part of  
the above - calls for dismissal of the mis-conduct.

Similarly, the hearing examiner held the mis-conduct  
hearing beyond the 7 day limit allowed by D.C. policy. I was  
available at 1330 hours on 9-17-08. Even if I wasn't

Robert R. Verbanik

Inmate's Signature

Date

9/25/08

GV 671-9 Verbanik, Robert

From: A 552586

the policy was broken and calls for dismissal; the institution <sup>must</sup> ~~should have~~ make arrangements and I did not sign a time waiver, again (a) above grounds for appeal.

Go Schullen, shows contradiction in his presentation of fact: He claims <sup>I was</sup> arguing with him at 0:800 and later says I went to work at 0:800. Which is true? - again see (c.) above grounds for appeal and dismissal of mis-conduct. Also, Mr. Benkley, is a witness at 08:04 I was talking to him - see (a) above.

Wherefore, I ask the P.R.C. to scrutinize this author's facts presented against the facts presented by Go Schullen and find for the accused because of the weight of the evidence presented:

I. The mis-conduct

II. Inmate's version

III. Inmate's grievance of 8/28/08

IV. Inmates Complaint of

9/5/08 Follow-up 9/10/08

V. The present appeal

I ask P.R.C. to overturn the ruling of guilty, lower the original misconduct to a class 11, strike the mis-conduct from inmates records and any other appropriate action the P.R.C. deems necessary not to exclude a separation order of inmate Verbanik from Go Schullen, and a good time release from R.H.U.

Robert Verbanik

Inmate Signature

Dated 9/25/08

DC-141

PART II C

COMMONWEALTH OF PENNSYLVANIA

Rev. 6-84

HEARING SUPPLEMENT

DEPARTMENT OF CORRECTIONS

INMATE VERSION AND WITNESS STATEMENTS

DC Number

Name

Institution

No. from PART I

GV6719

VERBANIK, Robert

SCI MERCER A 552586

INMATE'S VERSION

% Schuller's mis conduct No A552586 OF 9/11/08, makes no sense and contradicts itself. He says I committed the alleged acts at 8 AM. Later in the write up he says I left for my work as a tutor at 8 AM.

The leaving for work at 8 AM is exactly right. I was talking to my Supervisor, Mr. Berkley, at about 8:09 AM. I was sick and told my Supervisor so, he told me to return to my housing unit. I had already put in a sick call request and have a carbon copy of the sick request.

% Schuller also says I lied to him. I never had any of the alleged conversation with him. I was not in the house at 8 AM. Moreover, I work at 8 AM what do I care if the lights are on or off. Plus, sometime after or around 8:30 AM Capt. Dechant came and talked to me for the 1st time.

The Capt. asked me if I was filing some sort of paper work against % Schuller or if I was going to have my lawyer do something. My answer was No. I went back into the C-A dayroom waiting for 8:40 more time to go to law library. I have that right, but no right to yard when laying for sickness.

I went to law library at 8:40. I was later called back and again questioned by Capt. Dechant. The Capt. asked me if I cursed and questioned another dayroom dorm inmate on "why they do not say anything about dorm lights being on in the morning." I said no I never asked that question and "Why would I?" meaning I work in the morning I could care less about the lights.

I believe this write-up to be retaliation for a grievance filed on 8/28/08, for threats on 8/27/08 by % Schuller, and for a complaint filed with the Superintendent on/about 9/5/08, about % Schuller, "Interrogating" me about a dropped/dismissed misconduct at SCI Somerset. How did he find out?

Robert Verbanik

Pg. 2

GV6719 Verbanik, Robert

Inmate Version  
No. A552586

Why did %Schuller ask about a misconduct that was dismissed at Somerset? How did he know about it?

Please See D.C. ADM. 804 IV(N) and VI(12).

A time line follows to show the progression of %Schuller's biased actions:

- 8-21-08 - Selective use of reprimands - block-card for sleeping at 6<sup>th</sup> count - Me, My cellmate and Arthur Sprague in C-A 8-1 because of faulty speaker but I was the only one reprimanded then threatened with - "go to hearing examiner", "raised to level 3" - "go to F-block" - "lose your tutor's position" - "lose pre-release status". Later before %Schuller went home "have a nice time getting up tomorrow morning Mr. Verbanik".
- 8-28 - I wrote a grievance about %Schuller not reporting broken speaker and his threats. %Schuller was off on 8-28, %Polling E-mailed broken speaker work order.
- 8-29 - First retaliation, I was moved to 2<sup>nd</sup> floor dayroom dorm when Arthur Sprague was written up the week before his mis-conduct was taken-up with no move to a dorm-room.
- 8-29 - Also maintenance came and replaced the speaker - still did not work. (over)

- 8-29 In addition, % Schuller, went to my cellie in C-A-6-2, Robert Hurvoskey, and tried to talk him into saying that I threatened him, Mr Hurvoskey told him no that I did not. Mr. Hurvoskey told me he would write the incident up about % Schuller.
- 9-3-08 Capt. Dechant asked me if I was planning on seeing % Schuller and went on to tell me about a stay in the hole and removal from this institution if I asked for a seperation from % Schuller.
- 9-5 % Schuller in terrogated me about an SSI. Somenset misconduct that was thrown out or dismissed by the hearing examiner.
- \* I followed this incident up with a complaint to the Superintendent - I have a copy.
- 9-11-08 I signed out for work at 8<sup>A</sup> and the rest is history. Second retaliation for my complaint to the Warden - removal to A block.
- 9-12 Mrs. King with Mr. Wint present said "A concern back in Dec of 07 on A block was of me making racial comments" and that she was told today that I was at it again. If that was a concern, how, while I was off the block it did not occur, and why was I brought back?



| DC-141<br>Rev. 6-84<br>INMATE REQUEST FOR<br>REPRESENTATION AND WITNESSES  |          | PART II A<br>COMMONWEALTH OF PENNSYLVANIA<br>DEPARTMENT OF CORRECTIONS   |         |                     |
|--|----------|--|---------|---------------------|
| DC Number  | Name     | Institution  | Date    | Number as on Part I |
| GV6719   | VERBANIK | SCI MERCER   | 9-11-08 | A 552586            |
| <p>You have been charged with a misconduct. You may request assistance and/or witnesses to appear at your hearing by completing the section(s) below.</p> <p>In order to have assistance or witnesses at your hearing, you must complete this form and present all copies to one of your housing officers no later than 9:00 a.m. the first working day after you receive notice of the misconduct.</p>  |          |  |         |                     |
| <p>Assistance: <input type="checkbox"/> I do not request assistance</p> <p>AC-ADM-007 <input checked="" type="checkbox"/> I request assistance by <u>Mr. Winfred Milner, AP-6690 (Inmate Legal Reference Aide)</u> <i>Is Need Assist because Eye Sight, Denied by Alex. Inmate is capable of present his own defense</i></p> <p>(The person requested must be willing to assist you)</p> <p>Witnesses: You may request witnesses in accord with DC-ADM 801. State the relevance and importance of the testimony the witness will give.</p> |          |  |         |                     |
| <p>1. Name of Witness: <u>MR. BENTLEY</u> <i>Teacher/Supervisor</i></p> <p>Why is this person's testimony relevant and important?<br/><u>Staff who Approved My Work Exits.</u></p>   |          | <p>DO NOT WRITE IN THIS SECTION<br/>For Use by Hearing Examiner</p> <p>Witness permitted? <u>No</u> If not, why not?<br/><u>Denied by Alex. Not needed to determine guilt or innocence</u></p> |         |                     |
| <p>2. Name of Witness: <u>Winfred Milner</u> <i>Inmate Legal Ref. DC-ADM 007 Reference Aide</i></p> <p>Why is this person's testimony relevant and important?<br/><u>I need Mr. Milner, because I am legally blind in my right eye, awaiting corrective surgery here at Mercer and unable to collect relevant law information for the above reason.</u></p>  |          | <p>Witness permitted? <u>No</u> If not, why not?<br/><u>Same as 1</u></p>  |         |                     |
| <p>3. Name of Witness: <u>Thomas Molina</u> <i>FL</i></p> <p>Why is this person's testimony relevant and important?<br/><u>This man was standing by 96's office at about 8 AM. This is the time of the alleged abusive language use.</u></p>   |          | <p>Witness permitted? <u>No</u> If not, why not?<br/><u>Same as 1</u></p>  |         |                     |
| <p><u>Robert R. Verbanik</u><br/>Inmate's Signature</p>  |          | <p><u>P. McKusock</u><br/>Hearing Examiner's Signature</p>   |         |                     |
| <p>This section to be completed by Housing Officer only</p> <p>Received completed form <u>1530</u> hours <u>9-12-8</u></p> <p><u>Det. Story</u><br/>Housing Officer's Signature</p>  |          |  |         |                     |

|  |                         |  |                                |  |  |
|--|-------------------------|--|--------------------------------|--|--|
| DC-141<br>Rev. 6-84<br>DISCIPLINARY HEARING REPORT   |                         | PART II B<br>COMMONWEALTH OF PENNSYLVANIA<br>DEPARTMENT OF CORRECTIONS   |                                | No. from Part I<br><b>A552586</b>  |  |
| DC Number<br><b>GV6719</b>   | Name<br><b>Verbanik</b> | Institution<br><b>SCI-Mer</b>  | Hearing Date<br><b>9-17-08</b> | Hearing Time<br><b>1130</b>  |  |
| INMATE PLEA<br><input type="checkbox"/> Guilty<br><input checked="" type="checkbox"/> Not Guilty   |                         | Verdict<br><input checked="" type="checkbox"/> Guilty<br><input type="checkbox"/> Not Guilty   |                                | #33<br>#35<br>#39  |  |
| HEARING ACTION   |                         |  |                                |  |  |
| FINDINGS OF FACT, VERDICT, AND SANCTIONS IMPOSED<br>Attempted to conduct hearing at above date and time. Inmate is currently SEL. Hearing continued until next available date.<br>Hearing continued 9/24/08. at 1023<br>Verbanik pleads not guilty to 33, 35 & 39.<br>He submits a version.<br>Alex believes CO Schulle's report over Verbanik's denial. CO Schulle's report presents a preponderance of evidence to establish that Verbanik was ordered to leave the staff office and he did not comply. He continued to be argumentative with staff. Further, he stated "I'm going to fucking talk to somebody about you". This constitutes abusive / obscene language.<br>Guilty 33 & 35<br>DISMISS 39<br>SANCTIONS 33 15 days<br>35 45 days<br>60 days |                         |  |                                |  |  |
| <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO<br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO<br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO<br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO   |                         | The inmate has heard the decision and has been told the reason for it and what will happen.<br>The circumstances of the charge have been read and fully explained to the inmate.<br>The opportunity to have the inmate's version reported as part of the record was given.<br>The inmate has been advised that within 15 days a request for a formal review may be submitted and that this request must contain specific reasons for the review. |                                | effective<br>9/12/08<br>SEE APPENDICES<br><input type="checkbox"/><br>Incident report<br>Witness form<br>Version |  |
| NAME(S) OF HEARING EXAMINER/COMMITTEE<br>(TYPED OR PRINTED)<br><b>P. McKissock</b>   |                         | Hearing Report and all appended information must be signed. Signature indicates finished report with appendices.<br><b>D. McKissock</b><br>SIGNATURE OF HEARING EXAMINER/COORDINATOR   |                                |  |  |

COMMONWEALTH OF PENNSYLVANIA  
STATE CORRECTIONAL INSTITUTION AT MERCER  
October 23, 2008

**SUBJECT: RESPONSE TO APPEAL  
MISCONDUCT # A552586**

**TO:** VERBANIK, Robert  
GV-6719  
Housing Unit M

**FROM:** *Michael W. Harlow DSRM*  
Michael W. Harlow  
Superintendent

I have reviewed your appeal dated October 8, 2008, concerning the above referenced misconduct.

You offer no new evidence or explanation that would lead me to believe that the Hearing Examiner or the Program Review Committee erred in their decisions.

Based on the above, I am upholding the decision of the Program Review Committee. Your appeal is denied.

MWH:mlh

cc: Deputy Ruffo  
Major Sutter  
Lieutenant Ayers  
Hearing Examiner  
Ms. King, Unit Manager  
Mr. Wint, Corrections Counselor  
Ms. Kusiak, Inmate Employment  
Ms. Snider, PBPP  
Ms. Reither for PRC File  
DC-14 via HU M Officer  
DC-15  
File

# Appeal To The Superintendent

Misconduct  
#A652586

3V6719 Verbanik, Robert

The PRC. claims I plead guilty. I did not! See PC. 141 Part 11B the disciplinary hearing report and see "all" my evidence and please do not gloss over my time-line of events showing the retaliation of % Schuller.

The findings of fact were insufficient to support the decision. On the face of % Schuller's misconduct it must be overturned. He made it up and this fact is very apparent. I could not be arguing with the % at 0800 and on my way to work at 0800. Moreover, if I was in a discussion with him and as he says he ordered me to leave his office and I do leave - How is that disobeying a direct order? Impossible! Schuller goes on to say I refused to work, but I went and was sent back. Another impossibility and a showing of Schuller's unreliability as a witness. How could the PRC. sustain the hearing examiner's finding of guilty with the amount of evidence - "beyond a reasonable doubt" in my favor.

The punishment is disproportionate to the offence. My records are free of any similar offences and are not indicative of a liar. Therefore, the punishment is cruel and unusual.

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File

Hearing Appeal  
To P.R.C.

GV6719 Verbanik, Robert

From: A552586

The policy was broken and calls for dismissal. The institution must make arrangements and I did not sign a time waiver, again (a) above grounds for appeal - must be dismissed.

% Schaller, shows contradictions in his presentation of fact. He claims I was arguing with him at 0:00 and later says I went to work at 0:8:00. Which is true? - again see (a) above grounds for appeal and definite grounds for dismissal of mis-conduct. Also, Mr. Berkley, is a witness at 08:04, I was speaking to him - see (a+c) above grounds for appeal/dismissal.

Wherefore, I ask the P.R.C. to scrutinize this author's facts presented against the facts presented by % Schaller, and find for the accused because of the weight of the evidence in favor of the accused in the form of the %'s mis conduct and its inconsistencies, the inmate's version and time line of % Schaller's threats, attacks-retaliatory actions in the form of moves from cell to dorm, then threats, then interrogation and my grievance of 8-28 and complaint to Superintendent of 9-5-08, based on the interrogation of a dropped Somerset misconduct, then % Schaller's mis conduct and move to Adlock of 9/11/08.

I ask the P.R.C. to overturn the hearing

examinee's guilty finding, lower the original  
misconduct to a class 11 because I have  
no record of this type of behavior, and  
remove all records from inmate Verbanik's  
files. Also, the PRC is asked to make  
any other recommendations as it deems  
appropriate.

Respectfully Submitted dated 9/25/08

by:  
Robert R. Verbanik

Appeal To P.R.C.

Robert Verbanik

19.2

Inmate Version  
No. A552586

GV6719 Verbanik, Robert

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# Appeal To The Superintendent

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Michael W. Harlow *for*  
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From: A552586

The policy was broken and calls for dismissal; The institution must make arrangements and I did not sign a time waiver, again (a) above grounds for appeal - must be dismissed.

% Schaller, shows contradictions in his presentation of fact. He claims I was arguing with him at 0:00 and later says I went to work at 0:8:00. Which is true? - again see (a) above grounds for appeal and definite grounds for dismissal of mis-conduct. Also, Mr. Berkley, is a witness at 08:04, I was speaking to him - see (a & c) above grounds for appeal/dismissal.

Wherefore, I ask the P.R.C. to scrutinize this author's facts presented against the facts presented by % Schuller, and find for the accused because of the weight of the evidence in favor of the accused in the form of the %'s mis conduct and its inconsistencies, the inmate's version and time line of % Schuller's threats, attacks-retaliatory actions in the form of moves from cell to dorm, then threats, then interrogation and my grievance of 8-28 and complaint to Superintendent of 9-5-0 based on the interrogation of a dropped Somerset misconduct, then % Schuller's mis conduct and move to A block of 9/11/08.

I ask the P.R.C. to overturn the hearing

examinee's guilty finding, lower the original  
misconduct to a class II because I have  
no record of this type of behavior, and  
remove all records from inmate Verbanik's  
files. Also, the PRC is asked to make  
any other recommendations as it deems  
appropriate.

Respectfully Submitted dated 9/25/08

by:

Robert R. Verbanik

Appeal To PRC

To PRC

|   |                                 |   |                                   |
|---|---------------------------------|---|-----------------------------------|
| DC-141, Part 2 E<br>Misconduct Hearing Appeal |                                 | COMMONWEALTH OF PENNSYLVANIA<br>DEPARTMENT OF CORRECTIONS |                                   |
| DC Number<br><b>GV6719</b>                    | Name<br><b>Verbanik, Robert</b> | Institution<br><b>SCI-Mer</b>                             | No. From Part I<br><b>A552586</b> |

I was found guilty of misconduct number A552586 - on 9-24-08  
(date)

by the Hearing Examiner, and I wish to appeal that decision on the following grounds:

Check Area(s) Involved

- ☒ a. the procedures employed were contrary to law, Department directives, or regulations;  
☒ b. the punishment is disproportionate to the offense; and/or  
☒ c. the findings of fact were insufficient to support the decision.

Below is a brief statement of the facts relevant to my claims(s). It includes the identity of all persons who may have information that may be helpful in resolving this matter.

The present mis-conduct conflicts with DC.ADM. 804 IV(1) + VI(2) acts of vengeance or retaliation by staff complained on or grieved and must be dismissed because of my evidence presented <sup>and</sup> above grounds for appeal.

The hearing examiner claims she found me guilty by the preponderance of the evidence. I disagree and show "beyond a reasonable doubt" my innocence and that the misconduct was retaliation due to complaints by me against % Schullen - see evidence <sup>grievance</sup> <sup>complaint</sup> <sup>Inmate</sup> my version vs. Schullen's and my time line 2<sup>nd</sup> pg. of version and the hearing examiner's explanation of her guilty finding. When taken under consideration the foregoing calls for reversal and dismissal - (c) above grounds for appeal.

Witnesses and representation were denied clearly against DC.ADM. 801 & 007, Mr. Winfred Milner, AP6690, was part of the above - calls for dismissal of the mis-conduct.

Similarly, the hearing examiner held the mis-conduct hearing beyond the 7 day limit allowed by Doc. policy. I was available at 1330 hours on 9-17-08. Even if I wasn't

Robert R. Verbanik

Inmate's Signature

9/25/08  
Date

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS**

**55 Utley Drive  
Camp Hill, PA 17011-8028**

November 3, 2008

**OFFICE OF THE  
CHIEF HEARING EXAMINER**

Robert Verbanik GV-6719  
SCI-Mercer

Re: DC-ADM 801 - Final Review  
Misconduct No. A552586

Dear Mr. Verbanik:

This is in response to your appeal to final review of the above numbered misconduct.

In accordance with DC-ADM 801, VI, L, 3, I have reviewed the entire record of this misconduct; including the misconduct report, the hearing report and related documents, your appeal to the Program Review Committee and their response, your appeal to the Superintendent and his response. I have also thoroughly reviewed the issues you raise to final review.

The issues you raise to final review have already been addressed by the Program Review Committee and the Superintendent. On review of the record, this office concurs with their responses. I find no persuasive basis from which to conclude that the Examiner erred in conducting the hearing. The Examiner specifically documented findings of fact based on evidence presented at the hearing to support the decision. The procedures followed were in complete accordance with DC-ADM 801, §VI. The sanction imposed is not viewed to be disproportionate to the offense, and therefore will not be amended at this level.

For the above-stated reasons, the responses provided by the Program Review Committee and the Superintendent are upheld in full. Your appeal must, therefore, be denied.

For the Chief Hearing Examiner's Office:

BY: \_\_\_\_\_  
Timothy I. Mark  
Deputy Chief Counsel for Hearing and  
Appeals Office of Chief Counsel  
Pennsylvania Department of Corrections

12/14/08

Exhibit S.

To: Chief Hearing Examiner

Fr: Robert Verbanik  
GV6719- Mercer  
801 Butler Pike  
Mercer, Pa. 16137

Re: Addition evidence  
showing a timeline and  
witness statement for  
a four day campaign of  
harassment by Sgt Yohe,  
% Yourema and % Gordon  
over a four day period.

dated  
12/18/08

Submitted by,  
Robert R. Verbanik  
GV6719

To: Chief Hearing Examiner

Re: Misconduct  
Number - A 552586

Fr: Robert R. Verbanik  
GV6719 S.C.I. Mercer  
801 Butler Pike  
Mercer, Pa. 16137

The above cited misconduct written on 9-11-08, has been on appeal to your office since 10-28-08, and you have not responded.

ADM Rule 801 C. (6), (7) and (8), respectively state: (6). Final Appeal to "The Chief Hearing Examiner's Office shall be reviewed and responded to on every misconduct appeal to final review within seven working days of receipt of all necessary records for review"

(7). "... The Chief Hearing Examiner's Office shall respond directly to the inmate in all cases where the position taken by the facility is upheld."

(8). And, "... a letter to the inmate and memorandum to the Facility..." shall be sent when the C.H.E. reverses, amends or remands a misconduct sanction.

Therefore, this inmate asks the Chief Hearing Examiner to dismiss the misconduct for his/her failure to respond in a timely manner. It has now been twenty-one working days since appeal filing.

Thank you!  
Robert R. Verbanik



Fr: Robert R. Verbanik  
GV6719 - Mercer  
801 Butler Pike  
Mercer, Pa. 16137

Exhibit T.  
Re: Misconduct  
Appeal # A552586

I have heard nothing from you Sir since my Appeal to you filed on 10/28/08.

I also sent further information to you on three occasions - 11/4, 11/18 and 12/18/08. With no responses from you.

The U.S. Supreme Court recognizes three reasons to circumvent the exhaustion of administrative remedy exhaustion

1) Where such requirement would subject the individual to an unreasonable or indefinite time frame for action.

2) Where the Administrative agency lacks the competence to resolve the particular issues presented.

3) The exhaustion of administrative remedies would be futile because the administrative body is shown to be biased or has predetermined the issues before it. > see Cambell v. Chadbourne, 505 F. Supp. 2d 191, 197 (2007)

, also see Shurney vs. INS., 201 F. Supp. 2d 783, 789 (N.D. Ohio 2001) Citing McCarthy 503 U.S. at 146, 148, 112 S.Ct. at 1088.

In addition under 21 Pa. CSA 504, The inmate

must be given an opportunity to be heard,  
all testimony must be recorded and a  
complete record of the proceedings must  
be kept.

Plus at 2 Pa. C.S. 505, reasonable  
examination and cross examination must  
be allowed.

Neither of these two procedural  
laws were followed at my hearing before  
the Hearing Examiner or the P.R.C. Committee.

My wait for an answer from you,  
Sir, has been extreme to the nth degree

You must according to your own  
D.C. policy state law and recent Federal  
Decisions dismiss my misconduct.

Respectfully,  
dated 1/19/09 Robert R. Verbanick

**COMMONWEALTH OF PENNSYLVANIA**

**DEPARTMENT OF CORRECTIONS**

**55 Utley Drive**

**Camp Hill, PA 17011-8028**

November 3, 2008 *Received on 2-25-09*

**OFFICE OF THE  
CHIEF HEARING EXAMINER**

Robert Verbanik GV-6719  
SCI-Mercer

Re: DC-ADM 801 - Final Review  
Misconduct No. A552586

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For the above-stated reasons, the responses provided by the Program Review Committee and the Superintendent are upheld in full. Your appeal must, therefore, be denied.

For the Chief Hearing Examiner's Office:

BY: \_\_\_\_\_

Timothy I. Mark  
Deputy Chief Counsel for Hearing and Appeals  
Office of Chief Counsel  
Pennsylvania Department of Corrections